

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 15, 2006

**STATE OF TENNESSEE V. MICHAEL WILKERSON**

**Direct Appeal from the Criminal Court of Warren County  
No. 9147 Larry B. Stanley, Jr., Judge**

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**M2005-02175-CCA-R3-CD - Filed September 22, 2006**

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The defendant, Michael Eugene Wilkerson, was convicted by a Warren County jury of three counts of the sale of over .5 grams of a schedule II drug – cocaine and a fourth count of causal exchange of a schedule VI drug – marijuana. The trial court sentenced the defendant as a Range II, multiple defender, to nineteen years on each of the three felony convictions to run consecutively and to an eleven month twenty-nine day sentence for the casual exchange conviction, to run concurrently with the felony sentences. In this appeal, the defendant contends the evidence was insufficient to sustain his conviction. Following our review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of  
the Criminal Court Affirmed**

J. S. DANIEL, Sr.J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ALAN E. GLENN, JJ., joined.

Niles Stephen Nimmo, Nashville, Tennessee, Attorney for the appellant, Michael Eugene Wilkerson.

Paul G. Summers, Attorney General and Reporter; Elizabeth Bingham Marney, Assistant Attorney General; Clement Dale Potter, District Attorney General; and Larry Bryant, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

Jason Rowland testified that he is an investigator with the District Attorney's office and a member of the Thirty-First Judicial District Drug Task Force. As a part of his drug task force duties, Rowland

said he arranges undercover illicit drug buys through confidential informants. Rowland learned from Coffee County law enforcement officials that James Elam had knowledge of the availability of illicit drugs in Warren County.

In the present case Elam agreed with Rowland to serve as a confidential informant in a series of scheduled drug buys. Elam further agreed he would be paid on a case-by-case basis the sum of one hundred dollars per successful drug buy. Elam had no pending criminal charges.

Elam informed Mr. Rowland he knew the defendant Wilkerson and others were selling drugs in McMinnville and agreed to engage Wilkerson in a series of buys. Rowland testified that the procedure employed in the scheduled drug buys with the defendant was the same with each buy. On each occasion, Elam informed Rowland that he had information leading him to believe a buy could be made. Elam then met with Rowland at Rowland's office to obtain the money used to purchase the drugs. Each time Rowland physically searched Elam and Elam's automobile. Elam would then be wired with a low frequency transponder to enable Officer Rowland to both physically observe the transaction while monitoring and recording the audio portion.

Once Elam was wired, he would proceed to the rendezvous point. Rowland would follow discreetly behind in an effort to observe the transaction and the individuals involved in the buy. When a buy was completed, Elam would return to Rowland's office where he and his automobile would be searched. Next, Elam would provide a written statement detailing the sale and would be paid his \$100.00 for conducting the buy. The drugs were forwarded to the Tennessee Bureau of Investigation Crime Laboratory ("TBI") for testing.

The first scheduled buy from the defendant occurred on March 12, 2002. Both Elam and Officer Rowland testified that pursuant to the established procedure they met at Rowland's office, then Elam and his automobile were searched, Elam was wired and provided the funds necessary to make the drug buy. Elam called the defendant and told him he wanted to purchase cocaine. According to Elam's testimony, he was directed to a trailer located on Smartt Station Road. Shortly thereafter, the defendant arrived at the location in a dark colored minivan. Elam purchased crack cocaine from the defendant.

Per the established protocol, Elam returned to Rowland's office with Rowland following in an unmarked vehicle. Elam and his vehicle were searched by Rowland. Elam provided a written statement about the buy and in return received his \$100.00 payment. Rowland produced an audio tape of the transaction, including any conversation between the defendant and Elam.

The drugs purchased during the March 12, 2002, buy were examined by the TBI Crime Lab. TBI technician David Brown testified that the substance tested was positive for cocaine and weighed 1.4 grams.

The next scheduled buy occurred on March 17, 2002, following the same procedure utilized in the previous buy. Again after Elam and his vehicle were searched and Elam was wired and

provided the drug buy funds, Elam called the defendant to arrange another buy at the defendant's home. Rowland testified that he followed Elam to the house maintaining a sufficient distance to avoid detection. Rowland acknowledged that he lost visual sight of Elam periodically but never lost audio.

Once Elam arrived at the defendant's home, Elam was directed to follow the defendant to another location. The defendant drove a black Chevrolet on the date of this buy. Rowland could not identify the driver but did observe the black Chevrolet vehicle. Officer Rowland followed both vehicles to the Cotten Apartments to Chris Cummings' apartment. The defendant and Cummings went into the apartment; however, Cummings came out alone and sat in the car with Mr. Elam. After some time, the defendant returned to the car while Cummings returned to his apartment. Elam paid Wilkerson and accepted a substance represented as cocaine. Again, the entire transaction was captured on audio tape by Rowland. Following the purchase, Elam returned to Rowland's office where he and his vehicle were searched. Elam delivered the purchased cocaine, gave a statement to Rowland about the buy, and received his \$100.00 payment.

The rock-like substance purchased in the March 17, 2002, buy was submitted to the TBI crime lab for testing. Adam Gray with the TBI crime lab testified that the substance was cocaine and weighed 1.1 grams.

A third drug buy took place on March 21, 2002. On this day, the same preparatory procedure was followed. On this particular occasion, Elam contacted the defendant and proceeded to defendant's family home in Highland Park Subdivision. Rowland testified that pursuant to the established procedure he followed Elam to the Wilkerson home. Initially upon arrival, the defendant was not home. Elam called the defendant, who directed Elam to return to the home where he ultimately met with the defendant. Rowland said he observed the same black Chevrolet automobile involved in the previous transaction. On this occasion, Elam purchased both cocaine and marijuana.

This third drug buy was also recorded via audio tape. After making the purchase, Rowland followed Elam back to his office where Elam was searched. Elam gave a written statement as to the specifics of the buy and received his \$100.00. The purchased drugs were taken from Elam and submitted to the TBI crime lab for examination. On this last purchase David Brown of the TBI testified that the substances obtained testified positive for cocaine with total weight of 1.0 grams and for marijuana at a total weight of 7.3 grams.

Chris Cummings testified that he recalled Elam and the defendant coming to his apartment at Cotten Apartments on March 17, 2002. However, he said he had no knowledge of the drug transaction and was not present when it took place.

Defendant's mother, Joyce Wilkerson, testified that she listened to the audio tape recordings of the drug buys and recognized her voice on the recording of a telephone conversation between Elam and the defendant arranging a buy. However, she did not recognize any of the voices on the tape, including her son's voice. Ms. Wilkerson also testified that her son, Michael Wilkerson, was

the owner of the black Chevrolet Caprice.

Eugene Wilkerson, the defendant's father, testified on behalf of his son. He said he reviewed the state's tape recordings of the transactions. While he could identify his son's voice on the March 21<sup>st</sup> transaction, he could not recognize the voice of his son on any of the other tapes.

Defendant Michael Wilkerson, who testified in his own defense, denied having any contact with Elam and further denied ever selling cocaine or marijuana to Elam. He said his father was in error in identifying defendant's voice on the March 21, 2002, tape recorded transaction.

Lorissa Elam, the estranged wife of Elam, testified that Elam was a drug user and had been using cocaine throughout the period of the time of these transactions and shortly before the trial of this matter.

The jury found the defendant guilty on all four counts.

## ANALYSIS

### **Sufficiency of the Evidence**

The only issue raised for appellate review is the sufficiency of the evidence to support these convictions. Where on appeal a challenge is raised to the sufficiency of the evidence, the appellate court's inquiry is to determine whether, considering the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Tuggle, 639 S.W.2d 913 (Tenn. 1982); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

When the guilt is determined by a verdict of a jury which is approved by the trial judge, that verdict accredits the testimony of the witnesses for the state and establishes their credibility. Such a verdict displaces the presumption of the defendant's innocence and raises a presumption of his guilt and puts upon him on appeal the burden of showing that the evidence preponderates against the verdict and in favor of his innocence. State v. Townsend, 525 S.W.2d 842 (Tenn. 1975). The standard of appellate review is the same whether the conviction is based upon direct or circumstantial evidence. State v. Vann, 976 S.W.2d 93, 111 (Tenn. 1998).

Tennessee Code Annotated Section 39-17-417(a)(3) makes it an offense for an individual to knowingly sell a controlled substance. Section 39-17-417(c)(1) provides that the sale of cocaine (Schedule II) in an amount involving .5 grams or more is a Class B felony. Therefore, the state carries the burden of proving that the substance was knowingly sold by the defendant, that the substance sold was in fact cocaine and that the quantity of the cocaine exceeded .5 grams.

Tennessee Code Annotated Section 39-17-418 makes it a crime for a person to knowingly possess or casually exchange a controlled substance unless it is obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of a professional practice.

Therefore, before a defendant may be convicted of this offense, the state must prove beyond a reasonable doubt the existence of the following two essential elements: (1) that the defendant

intentionally, knowingly, or recklessly casually exchanged the controlled substance, and (2) that the substance was in fact marijuana, a controlled substance.

Our legislature has defined these various mental elements as follows:

Tenn. Code Ann. § 39-11-106(18). “Intentionally”

“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

Tenn. Code Ann. § 39-11-106(a)(20). “Knowingly”

“Knowingly” means to a person who acts knowingly with respect to the conduct or the circumstances surrounding the conduct when the person is aware of the nature of the conduct or the circumstance exists. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

Tenn. Code Ann. § 39-11-106(a)(31). “Recklessly”

“Reckless” means that a person who acts recklessly with respect to the circumstances surrounding the conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person’s standpoint.

With these elements and mental states in mind, our review of the record leads us to conclude that any rational trier of fact could have found the existence of the essential elements of each of the crimes beyond a reasonable doubt. The testimony of Mr. Elam and Officer Rowland very specifically established the circumstances surrounding each drug buy. All three scheduled buys were conducted under an established protocol with that protocol being closely followed as to each transaction. The informant Elam made the first two buys of cocaine and the final buy of cocaine and marijuana from this defendant. Tape recordings captured the conversation taking place during each buy. The drugs purchased in the transactions were sent to the TBI lab for further analysis and each respective staff member testified as to the nature of the tested substance and its weight.

The jury heard from Elam and Rowland about each transaction. They also heard the testimony of the defendant’s mother who corroborated Elam’s claim that he was calling the

defendant's home trying to locate him for one of the sales. Similarly, the defendant's father corroborates both Mr. Elam's and Officer Rowland's testimony that the defendant's voice was captured as a part of the recordings of the drug sale on March 21, 2002. Chris Cummings

corroborated the March 17, 2002 sale by testifying to the presence of the defendant and Elam at the Cotten Apartment complex.

Further corroboration is found in Officer Rowland's observations of a black Chevrolet Caprice and a dark minivan used by the perpetrator in these sales. The testimony of both the defendant and his father establish that Mr. Wilkerson is the owner of such a black Chevrolet vehicle as well as two vans matching the general description of the van used in one of the sales. This evidence combined with the circumstances surrounding each purchase and the established protocol afforded the jury sufficient evidence to find guilt beyond a reasonable doubt on all counts.

The thrust of the defendant's argument is that because investigating officer Jason Rowland never personally witnessed the defendant selling drugs to the informant, Rowland could not identify the defendant as the seller of the drugs or as the driver of any of the vehicles used in the drug buys. Therefore, the defendant claims the only evidence tying him to these offenses is the testimony of informant Elam, who he claims has no credibility due to Elam's own drug use and Elam's motivation to provide false testimony in exchange for funds to support his own drug habit.

Questions about the credibility of witnesses, the weight and value to be given their evidence as well as all factual issues raised by the evidence are resolved by the trier of fact, and this court does not reweigh or reevaluate the evidence. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Here, the jury chose to accredit the testimony of Elam. This Court will not usurp the jury's function.

We conclude that more than sufficient evidence exists to support the jury verdict and find that any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt in this proof.

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J. S. DANIEL, SENIOR JUDGE

